

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

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In re :
 :
THE FINANCIAL OVERSIGHT AND : PROMESA Title III
MANAGEMENT BOARD FOR PUERTO RICO, : Case No. 17-BK-3283 (LTS)
 :
as representative of : (Jointly Administered)
 :
THE COMMONWEALTH OF PUERTO RICO, *et al.*, :
 :
Debtors.¹ :
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THE OFFICIAL COMMITTEE OF UNSECURED :
CREDITORS OF THE COMMONWEALTH OF :
PUERTO RICO, :
 :
as agent of :
 :
THE FINANCIAL OVERSIGHT AND :
MANAGEMENT BOARD FOR PUERTO RICO, :
 :
as representative of :
THE COMMONWEALTH OF PUERTO RICO, : Adv. Proc. No. 17-00257-LTS
 :
Plaintiff-Counterclaim- :
Defendant, :
 :
v. :
 :
BETTINA WHYTE, :
 :
as agent of :
 :
THE FINANCIAL OVERSIGHT AND :
MANAGEMENT BOARD FOR PUERTO RICO, :
 :
as representative of :
 :
 :
 :

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

THE PUERTO RICO SALES TAX FINANCING CORPORATION (“COFINA”),	:
	:
Defendant-Counterclaim-Plaintiff,	:
	:
and	:
	:
THE COFINA SENIOR BONDHOLDERS’ COALITION,	:
	:
Intervenor-Defendant-Counter and Crossclaim-Plaintiff,	:
	:
v.	:
	:
PERMITTED INTERVENORS,	:
	:
Crossclaim Defendants.	:
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STATEMENT OF THE COFINA SENIOR BONDHOLDERS’ COALITION IN SUPPORT OF, AND JOINDER TO, THE MOTION OF THE COFINA AGENT TO CERTIFY QUESTIONS UNDER PUERTO RICO LAW TO THE SUPREME COURT OF PUERTO RICO

Intervenor Defendant/Counter- and Crossclaim Plaintiff, the COFINA Senior Bondholders’ Coalition,² submits this statement in support of the motion to certify to the Puerto Rico Supreme Court (the “Motion to Certify”), pursuant to Rule 25 of that Court, the novel and case-determinative questions of Puerto Rico law raised in this action, submitted by Bettina M. Whyte (the “COFINA Agent”), in her capacity as the appointed agent of the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) as representative of the Puerto Rico

² The members of the COFINA Senior Bondholders’ Coalition participating in this adversary proceeding are Fideicomiso Plaza, and the following entities, either as beneficial holders or on behalf of managed funds and accounts: Aristeia Horizons, L.P.; Decagon Holdings 1, L.L.C.; Decagon Holdings 2, L.L.C.; Decagon Holdings 3, L.L.C.; Decagon Holdings 4, L.L.C.; Decagon Holdings 5, L.L.C.; Decagon Holdings 6, L.L.C.; Decagon Holdings 7, L.L.C.; Decagon Holdings 8, L.L.C.; Decagon Holdings 9, L.L.C.; Decagon Holdings 10, L.L.C.; GoldenTree Asset Management LP; Old Bellows Partners LP; Scoggin Management LP; Taconic Master Fund 1.5 L.P.; Taconic Opportunity Master Fund L.P.; Tilden Park Capital Management LP; and Whitebox Advisors LLC.

Sales Tax Financing Corporation (“COFINA”) [Dkt. No. 329].³ In support of, and in joining the Motion to Certify to the extent set forth herein, the COFINA Senior Bondholders’ Coalition respectfully states as follows:

STATEMENT

1. In the Motion to Certify, the COFINA Agent requests that the Court certify the five (5) Puerto Rico Law Questions to the Supreme Court of Puerto Rico. In the Motion to Certify, the COFINA Agent asserts that the Puerto Rico Law Questions raise entirely novel state statutory and constitutional law issues of fundamental importance to the Commonwealth and, as such, should be certified to the Supreme Court of Puerto Rico.

2. While the COFINA Senior Bondholders’ Coalition joins the Motion to Certify, including the arguments made therein, it does so *only as an alternative basis for relief* should the Court deny the relief requested in the Motion for Summary Judgment of the COFINA Senior Bondholders’ Coalition and its Memorandum of Law in Support of Motion for Summary Judgment [Dkt. Nos. 306-07] (the “Motion for Summary Judgment”). The COFINA Senior Bondholders’ Coalition respectfully submits that the Court should certify the Puerto Rico Questions solely to the extent that the Court finds that there is an ambiguity in the COFINA Enabling Act or the Puerto Rico Constitution that could lead to the rejection or invalidation of the COFINA Enabling Act’s express direction that the Pledged Sales Tax and the Dedicated Sales Tax Fund are COFINA’s property.

3. As explained more fully in the Motion for Summary Judgment,⁴ certification of the Puerto Rico Law Questions is not necessary if the Court follows the plain, unambiguous terms of

³ Capitalized terms not defined herein shall have the same meaning as in the Motion to Certify.

⁴ The COFINA Senior Bondholders’ Coalition hereby incorporates by reference the arguments set forth in pages 42-45 of the Motion for Summary Judgment.

the COFINA Enabling Act and the Puerto Rico Constitution. However, even if there were a reasonable basis for disregarding the plain language of the COFINA Enabling Act and the Puerto Rico Constitution, and for disregarding the deference owed to the Legislative Assembly, it would be improper for this Court to grant summary judgment to the Commonwealth Agent or the GO Bondholders. Rather, the proper course would then be to certify the questions to the Supreme Court of Puerto Rico. As the United States Supreme Court has cautioned the lower courts, “[f]ederal courts [should] be reluctant to adjudge a state statute to be in conflict with the state Constitution before that question has been considered by the state tribunals.” *See Mich. Cent. R. Co. v. Powers*, 201 U.S. 245, 291 (1906).

CONCLUSION

For these reasons and the reasons set forth in its Motion for Summary Judgment, the COFINA Senior Bondholders’ Coalition joins the Motion to Certify, and requests that the Court grant the Motion to Certify, but only as an alternative basis for relief, should this court deny the relief requested by the COFINA Senior Bondholders’ Coalition in its Motion for Summary Judgment, and grant such other and further relief as the Court deems appropriate.

DATED: February 26, 2018

Respectfully submitted,
REICHARD & ESCALERA

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CERTIFICATE OF SERVICE

I hereby certify that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for the parties of record.

/s/ Carlos R. Rivera-Ortiz
USDC-PR 303409